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In The
Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-479

STANLEY D. EDMONDS,
Petitioner

v.

COMPAGNIE GENERALE
TRANSATLANTIQUE,
Respondent.

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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PRELIMINARY STATEMENT

Liberty Mutual Insurance Company, amicus curiae, submits this Brief in Support of the Petition for Writ of Certiorari, with the written consent of the parties which is filed herewith.

INTEREST OF AMICUS CURIAE

Interest of Amicus in Longshoremen's Act Cases Generally

Liberty Mutual Insurance Company, a Massachusetts corporation with its principal office at 175 Berkeley Street, Boston, Massachusetts, is a mutual company writing property and casualty insurance, including workmen's compensation coverage, in each of the United States. It writes a substantial amount of workmen's compensation coverage under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §901 et seq. and under the identical District of Columbia Workmen's Compensation Act, 36 D.C. Code §501 et seq.

As of June 30, 1978, amicus had on its books 1,272 active claims under the Longshoremen's and Harbor Workers' Compensation Act. The Combined Reserves carried by amicus on these claims totaled $38,687,167. This represents the esti-

mated "value" of these claims.

These 1,272 claims were carried by amicus in its offices in the following states:

Maine	Louisiana
Massachusetts	Texas
Rhode Island	California
Connecticut	Oregon
New York	Washington
New Jersey	Hawaii
Pennsylvania	Kentucky
Delaware	Tennessee
Maryland	Ohio
Virginia	Illinois
North Carolina	Michigan
South Carolina	Minnesota
Georgia	Arkansas
Florida	Oklahoma
Alabama	

As of June 30, 1978, amicus had on its books 1,151 active claims under the District of Columbia Workmen's Compensation Act. The Combined Reserves carried by amicus on these claims totaled $30,324,786.

It is apparent from these data that amicus has a very substantial interest in any matter involving the interpretation

and application of the Longshoremen's and Harbor Workers' Compensation Act. More specifically, any decision which, like that of the Court of Appeals below, limits the recovery by an insurance carrier from a third party of its "workmen's compensation lien" is of direct and important interest to amicus.

As so pithily stated by the dissenting judge below (App. 67-68), the law applicable in cases such as this is, as a result of the decision below, different in the States of Maryland, West Virginia, Virginia, North Carolina and South Carolina (the Fourth Circuit) from the law in all other states. It is therefore relevant to note that as of June 30, 1978, amicus had on its books 403 active claims under the Longshoremen's and Harbor Workers' Act in its offices located in the states of the Fourth Circuit. The Combined Reserves

carried by amicus on these claims totaled $11,856,332.

Of course not all of the claims enumerated above involve actions by employees against third parties, as in the instant case; and not all of the third-party cases involve fact situations which, as here, impinge directly upon the right of an insurance carrier to recover its full workmen's compensation lien. Nevertheless, the figures provide a good measure of the involvement of amicus in this whole area of federal workmen's compensation law.

Interest of Amicus in Case at Bar

Although not identified as such in the record, amicus was the insurance carrier for the employer of Stanley Edmonds, Petitioner, at the time of his injury. He made a claim for benefits under the Longshoremen's and Harbor Workers' Compensation Act, and amicus has paid such benefits to

him. As of September 25, 1978, medical benefits plus compensation for temporary total and permanent partial disability resulting from the accident have been paid to Petitioner in the total amount of $46,943.39. Payment of workmen's compensation continues at the rate of $184.07 per week.

On the basis of established law amicus would have a lien against any recovery by Petitioner in this action to the extent of benefits paid, namely $46,943.39 as of September 25, 1978. See, e.g., The Etna, 138 F.2d 37 (3 Cir. 1943). (For present purposes we disregard the question of liability for attorneys' fees and other legal expenses.)

Petitioner in this case seeks a recovery of $90,000.00 ($100,000 damages reduced 10% for his contributory negligence). Respondent denies liability for

more than $20,000, being 20% of the damages, based upon the jury's finding that Respondent's negligence contributed 20% to the accident. It is thus apparent that if Petitioner prevails in this Court amicus should recover $46,943.39 plus the amount of future benefits paid, whereas if Respondent prevails amicus would recover only $20,000 (again disregarding attorneys' fees). The Court of Appeals left open the question as to how much of the lien would actually be recoverable.

Thus amicus has not only a general interest in the outcome of this case but a specific, direct interest.

REASONS FOR GRANTING WRIT

1. The Decision Below Is In Conflict With Numerous Decisions In Other Circuits.

The conflict between the decision below and decisions of the Courts of Appeals for the Second, Fifth and Ninth Circuits

has been fully demonstrated in the Petition (pp. 8-17). In fact, as pointed out by the dissenting judge below (App. 67-68), the interpretation of the 1972 Amendments to the Longshoremen's Act decreed by the Fourth Circuit differs from the interpretation accorded to the Act by every other court which has considered the question. This situation alone should justify the granting of the Writ.

This Court has recently granted certiorari (and rendered a decision) in a case involving another aspect of the 1972 Amendments to the Longshoremen's Act. Northeast Marine Terminal Co., Inc. v. Caputo, 432 U.S. 249 (1977). The reasons for granting that writ were the same as the reasons present here. Not only was the question of statutory interpretation a matter of important federal law, but also there was a striking conflict between the

Circuits. The Fourth Circuit (en banc as here) had adopted the employer's interpretation, whereas the First, Second and Fifth Circuits had adopted that suggested by the employees. This Court granted the petition and ultimately accepted the majority view and reversed the Fourth Circuit. Adkins v. I.T.O. Corporation of Baltimore and Liberty Mutual Insurance Company, 433 U.S. 904 (No. 76-730, October Term, 1976) (amicus was a respondent in that case).

2. The Decision Below Is In Conflict With Decisions Of This Court.

Several conflicting decisions of this Court have been cited in the Petition (pp. 17-20). In addition, it should be noted that the decision below holds, in effect, that the 1972 Amendments to the Longshoremen's Act sub silentio overruled, in personal injury and death suits involving

actions by longshoremen and harbor workers, the well-established principle of maritime (and common) law known as "joint and several liability". E.g. The George Washington & The Gregory, 76 U.S. (9 Wall.) 513 (1870). This principle (which, incidentally, is also recognized in property damage cases) was embodied in the case of Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp., 342 U.S. 282 (1952). There a vessel owner found 25% at fault was required to pay 100% of the damages suffered by an injured longshoreman. Although the Reports of the Senate and House Committees accompanying the Bill which became the 1972 Amendments to the Longshoremen's Act cited numerous decisions of this Court which it intended to overrule or to limit, no mention was made of Halcyon or of an intent to alter or abolish the established principle of joint and several

liability. See U.S. Code Cong. & Adm. News, 92d Cong., 2d Sess. 4698, 4701-4705 (1972). Amicus submits that if the statute is to have that effect, as held by the Court below, the abolition of this fundamental principle of maritime law should be made by this Court and not by an inferior court.

3. The Instant Case Involves An Important Question Of Federal Law Which Has Not Been But Should Be Settled By This Court.

Amicus adopts Petitioner's discussion of this point (pp. 20-24). In addition, amicus points out that to it the resolution of the conflict between the Circuits and of the dispute as to the meaning of the 1972 Amendments to the Longshoremen's Act is a matter of more than academic interest. On the contrary the present uncertainty as to the proper interpretation of the statute is a matter of daily busi-

ness concern. Taking as examples the neighboring ports of Charleston, South Carolina (Fourth Circuit), and Savannah, Georgia (Fifth Circuit), amicus must, potentially at least, underwrite Longshoremen's Act coverage on a different basis in the two ports. Claims with third-party aspects must be adjusted, settled or litigated differently in the two ports. Other things being equal, coverage in Charleston will be more expensive than in Savannah.

CONCLUSION

Amicus submits that a federal statute, particularly one involving maritime commerce, should have a uniform interpretation and application throughout the nation. Therefore this Court should grant the Petition and pronounce an authoritative interpretation of the Longshoremen's Act insofar as it is involved in the instant case.

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